United States Postal Service *and* North Jersey Area Local, American Postal Workers Union, AFL–CIO. Case 22–CA–18329(P)

February 26, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

The question presented is whether the Respondent violated Section 8(a)(5) and (1) of the Act by failing to provide the Union, in a timely manner, with requested relevant information.

On November 23, 1992, Administrative Law Judge Joel P. Biblowitz issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the Respondent's exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.[1]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, United States Postal Service, Hanover Township, New Jersey, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

''(a) Refusing to bargain collectively with American Postal Workers Union, AFL–CIO (APWU) and its agent, North Jersey Area Local, APWU, by failing or refusing to furnish the requested information regarding bargaining unit employees in a timely and expeditious manner.''

2. Add the following as paragraph 2(b).

''(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.''

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with American Postal Workers Union, AFL–CIO (APWU) and its agent, North Jersey Area Local, APWU, by failing or refusing to furnish requested information regarding bargaining unit employees in a timely and expeditious manner.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

UNITED STATES POSTAL SERVICE

Julie Kaufman, Esq. and *Bradley Williams, Esq.*, for the General Counsel.
Carl C. Bosland, Esq., for the Respondent.
Renee Steinhagen, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

JOEL P. BIBLOWITZ, Administrative Law Judge. This case was heard by me on August 17 and 18, 1992,[1] in Newark, New Jersey. The complaint herein, which issued on May 15, was based on an unfair labor practice charge filed on March 9 by North Jersey Area Local, American Postal Workers Union, AFL–CIO (the Union). The complaint alleges that the United States Postal Service (Respondent) terminated its employee Gail Cogen on about February 6 because of her activities on behalf of the Union and because she filed charges with the Board, in violation of Section 8(a)(1), (3), and (4) of the Act. The complaint further alleges that Respondent failed and refused to supply the Union with certain requested information, which was relevant to the Union as the collective-bargaining representative of certain of Respondent's employees. This is alleged to violate Section 8(a)(1) and (5) of the Act. On the entire record, including my observation of the witnesses, I make the following

[1] The American Postal Workers Union (APWU) is the collective-bargaining representative of a nationwide unit, which includes employees at the Respondent's Hanover Township, New Jersey location. As the judge found, the North Jersey Area Local (the Local Union) is an agent of the APWU. In order to set forth this relationship more precisely, we shall substitute the following for the judge's Conclusion of Law 3.

''3. At all times material, the American Postal Workers Union, of which the Local Union is an agent, has been the exclusive bargaining representative of a nationwide unit which includes the following employees:

''All maintenance employees, special delivery messenger motor vehicle employees and postal clerks employed by Respondent at its Hanover Township, New Jersey location.''

We shall also make the appropriate modifications in the Order and notice to reflect accurately the relationship between the APWU and the Local Union.

[1] Unless indicated otherwise, all dates referred to herein relate to the year 1992.

FINDINGS OF FACT

I. JURISDICTION

Respondent admits, and I find, that the Board has jurisdiction over Respondent by virtue of Section 1209 of the PRA.

II. LABOR ORGANIZATION STATUS

The complaint alleges that the Union is a labor organization within the meaning of Section 2(5) of the Act. Respondent admits that the national union, the American Postal Workers' Union (APWU), is a labor organization within the meaning of Section 2(5) of the Act, but denies that the Union is a labor organization within the meaning of the Act. As found by Administrative Law Judge Steven Davis in *Postal Service*, 301 NLRB 709 (1991), I find that the APWU is a labor organization within the meaning of the Act, and that the Union is an agent of the APWU.

III. THE FACTS

Cogen, the alleged discriminatee herein, was employed at the Respondent's West Jersey General Mail facility (the facility) as an LSM operator, which involves operating a machine that directs the mail to the proper carrier or route. She worked on tour I from midnight to about 8:30 a.m. and had been the chief steward for the Union for the area since about September 1990. Her supervisor was John Goller. The instant problem arose in early May 1991, when Cogen received notice from the court system in Bronx, New York, to report for jury duty at 9 a.m. on Thursday, May 16, 1991. She testified that after receiving this notice, she spoke to a woman who is employed in the office at the facility, and was told to speak to Vickie Melillo (a bargaining unit employee and a member of the Union), the timekeeper on her tour at the facility. She met with Melillo on May 10 and told her that she had received notice to report for jury duty. Melillo gave her a number of forms that would have to be completed in order for Cogen to be excused from work and be paid for her court leave.[2] The first form was PS Form 1224, Court Duty Leave Statement of Service, and Melillo told Cogen to have the court officer sign it for each day that she was there. This form directs the employee to read the ELM and the time and attendance rules and provides spaces for total days served, total days excused, and the fees paid by the court. It also had a space for the signature of a court official. When Cogen later gave this form to a clerk at the court, he said that they do not fill out such forms. When she returned to the facility, she informed Melillo what the court clerk said, and Melillo told her not to worry about it, that a lot of times they cannot get that information. She told Cogen: ''Ed, in accounting, he'll get this information,'' referring to Edward Hibbitt, an accounting technician at the facility, a bargaining unit employee, and a member of the Union. In addition to form 1224, Cogen also signed a form stating that she was:

> [B]eing summoned for jury duty starting Thursday, May 16, 1991 understand I must obtain proof of attendance for each day I serve. Being that the U.S. Postal Service will continue to pay me for each day I serve (except N/S days), I must submit the check I receive from the court to the Finance Department of the West Orange GMF. They in return will reimburse me the mileage and N/S days due.

On that day she also completed a request for temporary schedule change for personal convenience, Form 3189, which (for the period involved) changed her worktime from midnight through 8:50 a.m. to 9 a.m. to 5:50 p.m., and her work days to Monday through Friday, as compared to her regular schedule, which gave her off Sunday and Monday. This was for the period May 15 through May 21, 1991, and was signed by Cogen on May 10.

There is also a PS 3971 form, Request For or Notification of Absence, that was executed by Cogen. She testified that she signed it on May 22, but all the other writing on the form belongs to Melillo and Goller, and a review of the form affirms that. This form states that it is for court leave, and requests 64 hours, from May 16 through May 28, from 9 a.m. to 5 p.m. On May 22 Cogen signed another Form 3189, with the same changes, this time for the period May 22 through May 31.

Melillo testified that court leave is one of her functions. When an employee approaches her about the procedure that has to be followed, Melillo goes into her ''spiel'' and issues the employees the required documents, including Forms 1224 and 3189, as well as Form 3971, which cannot be completed until the leave is over. She testified that she reassures the employees that they will lose nothing by being on court leave, but, ''[T]he only thing is they are going to have to bring proof for each day served in court.'' On about May 10, 1991, Cogen also signed the affidavit-like statement set forth above, which Melillo referred to as the ''in house form.'' Melillo was indefinite regarding what she (Melillo) filled in on Cogen's Form 3971 and when. She assumed that she wrote the parts written in red pen and that she wrote the number of hours requested—64—which was probably filled in at the end of Cogen's court leave. Regardless, 64 hours was incorrect; she mistakenly excluded Wednesday, May 29, 1991, and the total hours involved should have been 72. The 10th day was Monday, May 27, Memorial Day, a paid holiday for Respondent's employees and a day that the courts are closed. Melillo testified that unless the employee informs her of an ''interruption of service'' the employee is paid for the full period previously scheduled. Cogen was paid for 9 court leave days and 1 holiday (over two different pay periods) for a total of 10 days, 80 hours. The problem is that she only served 6 days of jury duty during this period. Admittedly, she did not serve on jury duty May 20, 24, and 29, 1991.

Cogen did not have to report for jury duty on May 20, 1991; she did have to (and did) report for jury duty on May 21, 1991. As to why she did not report for work on May 20, 1991, she testified:

> The reason why I was, was because I had jury duty on the 21st. So with me have the jury duty on the 21st, by the time if I come in at 12:00 o'clock and getting off at the time I was supposed to I wouldn't make jury duty on time for that day because I get off at 8:30 in the morning.

She testified the first time that she notified anyone at Respondent that she did not have jury duty on May 20 was on

[2] The Employee Labor Relations Manual (ELM), under which Respondent and the Union operate, provides that eligible employees are to be granted court leave for jury duty, as well as other situations.

the evening of May 21, morning of May 22, 1991 shift. She spoke to Melillo about it:

> I explained to Vickie the situation that happened that by the time I get . . . If I came to work and by the time I would get off from work and get home and have to change my clothes and shower and everything and I have to take public transportation to the Bronx Court House because there is no parking there . . . I wasn't driving, so there was no way I was going to make it there on time.
>
> So I told Vickie then that I wanted to use annual leave.

She testified that Melillo asked her some questions about how long it takes her to get home and then answered ''okay'' to her request for annual leave, although she did not give her annual leave forms.

Cogen did not report for jury duty on May 24, 1991. She did not report for work on that day either. She testified:

> Because by the time I got out from jury duty [presumably, on May 23, 1991] and I got home it was about 6:00 o'clock or a little after 6:00 with taking public transportation, I have to leave my house like at 10:00 o'clock at night to be able to make it to West Jersey on time. I hadn't had any sleep and I was tired.

She came to the facility on the following evening and spoke to Melillo. She testified that she told Melillo that she wanted to take annual leave for May 24, 1991, and Melillo answered: ''Okay.'' She did not appear for jury duty on May 29, 1991, as well. On the following evening, while she was at work, she told Melillo:

> Vickie, the same thing that happened on the 24th and all as far as me getting off and everything from jury duty and by the time I made it home I was late. I wasn't getting any sleep or anything and I said I'm going to have to use annual leave again and she just said: ''Okay and all.'' We didn't really talk. That was it.

It is undisputed that Cogen never filed a Form 3971 or any other formal request for annual leave for May 20, 24, or 29, 1991, nor did she ever request such leave from a supervisor. It is also undisputed that only a supervisory employee may authorize leave; Melillo was not a supervisory employee. Cogen testified that she did not know what her responsibilities were regarding court leave and Goller never told her of these responsibilities.

Melillo testified that Cogen never asked her to authorize annual leave, nor did any employee ever ask her that since she does not have that authority: ''I don't authorize annual leave.'' On none of the three dates testified to by Cogen did Cogen ask Melillo to authorize annual leave. The second in command at the facility, below the title of postmaster, is the superintendent of support services. Since about June 1991, this position was vacant and was being filled on a temporary basis by Nikki Mitchell an accounting technician and a member of the Union. In mid-September 1991 this position was filled by Ben Nowacky.

Hibbitt, who handles court leave matters, testified that in about June 1991, Cogen brought in the check that she received from the court in the amount of $103.80. He could not figure how 9 days resulted in this amount. To help resolve this difficulty he looked at the facility's court logbook which is kept by the timekeeper and records the days that an employee is out and paid for court leave. When he was still unable to correlate the amount paid with the number of days (he was accustomed to the New Jersey court system which paid $5 a day), he called the Bronx Court and was told that the jury duty pay was $15 a day. He testified: ''Again, it didn't match up to the days paid. It should have been more money,'' since he assumed that Cogen had been on jury duty for 9 days. In order to clear up this apparent discrepancy, by letter dated July 9, 1991, Hibbitt wrote to the Bronx Court requesting the actual days of jury duty that Cogen served. By letter dated July 11, 1991, the Bronx Court responded to Hibbitt's letter stating that Cogen served as a juror on the panel for 6 days, May 16, 17, 21, 22, 23, and 28, 1991. After receiving this letter, he concluded: ''We had a problem so I showed it to Nikki Mitchell.'' As stated above, Mitchell was, at the time, acting superintendent of support services. After discussing it with Mitchell, Hibbitt got an electronic timeclock report (ETC) which stated that Cogen was paid for 9 days of court leave, which did not correlate with the letter that he had received from the court. He discussed this with Mitchell and they decided that he should talk to Cogen about the problem. (This would be about late July or early August.) He met her at the facility and said: ''Gail, we have a problem with your court check and the days you were paid. Would you please come up to the finance department so we could check it out.'' She said that she would. Hibbitt waited a few weeks, but Cogen never approached him about the situation although he saw her in the area on grievances. In about mid-to late August he approached her again at the facility and said: ''Gail, have you forgotten about the court? We have to talk about it.'' Cogen said: ''No, I haven't forgotten. I'll be up.'' Although he was available subsequently, Cogen never came to see him about the subject. As to whether he approached her again about the subject, he testified: ''I didn't think it was my duty to approach her on it. She was told twice already.'' He again discussed it with Mitchell and they decided that rather than do anything themselves, they should wait until the position of superintendent of support services was filled: ''We felt it was a little two heavy for us being just clerks or 204-Bs. It should be dealt with when the position was filled.'' They thought the position would be filled in about a month, and in mid-September Nowacky obtained the position.

Hibbitt testified that about 2 weeks after Nowacky took over, he brought the situation to Nowacky's attention. He showed him the check, the court logbook, the ETC, and the letters to and from the court. Nowacky said that he would take care of it. Hibbitt had nothing to do with it after that.

Mitchell testified that she was acting in the position from about June through mid-September 1991, when Nowacky obtained the position. In about July Hibbitt told her that he had received the check for Cogen's jury duty, but could not figure out how it related to the days served. He called the court and learned that they paid $15 a day, but it still didn't match. In about mid-July he showed her the letters to and from the court listing the days that Cogen served together with the ETC. While the ETC said that she served and was paid for 9 days, the court letter said that she served 6 days. Hibbitt

told her that he would speak to Cogen about this discrepancy. He later told her that he had spoken to Cogen about coming to speak to him and she said that she would. He subsequently told her that he had spoken to Cogen again and asked her to come to speak to him about the court leave because she had not come to see him when he first asked her to do so. This was about the end of August. Mitchell testified that she knew that her position would be filled by the end of September 1991: ''So therefore I was going to leave it for that person . . . At the time I felt I wasn't capable of making such a decision.'' She did not speak to any of her superiors about the issue, nor did she later discuss it with Nowacky.

Cogen testified that the next occasion after May 1991 that she heard about the jury duty matter was on about December 11 or 12, 1991. On that day she went to Nowacky's office to get some information that the Union requested on an unrelated grievance. She testified that Nowacky was ''very nasty'' at that time and said that she could not have the requested information until the Union paid for it. When she told him that there was an understanding that the Union would be billed and pay for the information at a later time, Nowacky again told her that she was not getting the information, saying: ''You think you're so smart with your Labor Board charges.'' Nowacky asked her where she was on November 20, 1991, when she was supposed to be on jury duty. Cogen did not know what he was referring to; Nowacky showed her the court's letter to Hibbitt dated July 11, 1991, and Cogen asked him why she wasn't asked about this in July; he didn't answer. She asked to see the computer printout (presumably the ETC), but he refused, and told her to get the information herself. Shortly thereafter, Cogen went to the Bronx courthouse and asked about May 20; she was told that court was not in session on that day. She could not recollect what occurred on that day:

> I took a calendar and I looked and said May 20? What was going on May 20? I had to think all the way back to what took place that day and then I remembered what took place that day.

After realizing what occurred on that day she went to speak to Nowacky in late December 1991. She told him that by the time she had completed jury duty ''I wouldn't make it here. The same thing I told you before. I told him and I told Vickie that I wanted annual leave for the day and that I . . . requested annual leave for the day.'' She testified that Nowacky said that she could take either annual leave or leave without pay. She said that she would take annual leave and Nowacky said: ''No, I'm not going to accept it. Think about it and get back to me.'' At about the beginning of January, Cogen again told Nowacky that she wanted to take annual leave, but he said: ''No. You're not getting annual leave. I'm giving you leave without pay.'' That was her last conversation with Nowacky about the subject.

Nowacky assumed his position at the facility on September 23, 1991. He testified that in about October 1991, Hibbitt told him of the situation of Cogen's jury duty and showed him the underlying documents, saying that there was a discrepancy. Nowacky said that he would take care of it. However, he ''forgot about it.'' The reason: ''The days were a blur. Postmaster was new [began in August 1991], I was new. There were a number of initiatives that he wanted to put into place. I also wanted to feel my departments, because I have three under my authority.'' In December 1991, Hibbitt again approached him on the subject and asked him if he wanted to look again at the supporting documents. Nowacky said that he had forgotten about it and Hibbitt again showed him the forms 3971 and 3189, the ETC report, and the letters to and from the court. Nowacky asked Hibbitt why he wrote to the court and he said that he kept asking Cogen to speak to him about the matter, but she was avoiding him. Nowacky took the documents, and on December 10, 1991, when he saw Cogen in the finance office, he asked her: ''Gail, there is a problem here. The ETC report shows that you got paid for nine days. Yet the . . . letter from the court says that you only served six days. Please explain.'' She said that it was a mistake and Nowacky told her to get back to him in a reasonable amount of time. He did not speak to Cogen about the subject between December 10, 1991, and January 6. On about January 6, Cogen approached Nowacky and said that she didn't have an answer for him and asked what he wanted her to do about repayment. He said that he didn't know, that she should come to see him the following day.

Nowacky testified that about a day or two after this meeting, he called Lynn Goldstein, of Respondent's labor relations department, and described the situation to her. She told Nowacky that he had to turn the situation over to Cogen's immediate supervisor (Goller) ''because if he is going to do anything it's up to him.'' Nowacky called Goller and met with him the following day. He gave him all the papers involving Cogen's jury duty and told him, ''Now, it's up to you whatever you decide to do.'' He neither ordered or suggested that Goller take any particular action toward Cogen. About a week later, Cogen came to see Nowacky and said that she would take annual leave for the 3 days. Nowacky said: ''No way.'' He told her that he was not her immediate supervisor and could not authorize leave for her. She left.

Goller has been supervisor of mails at the facility for 4 years. He testified that in December 1991 he was given a note that Nowacky wanted to speak to him. He met with Nowacky who told him of the discrepancy with Cogen's court leave. He showed Goller the forms, the court letters, and the ETC report. Goller asked him whether he had spoken to Cogen about it, and he said that he had and she said that she would bring him something from the court within a week or two. After hearing nothing further from Nowacky, about 2 or 3 weeks later Goller went to see Nowacky. He asked if Cogen gave him anything that he could look at and Nowacky said that Cogen was avoiding him. Later that day, Goller saw Cogen and said that Nowacky had told him that there was a discrepancy in her court leave: ''What's the deal there?'' Cogen told him that there was a lot of red tape dealing with the New York courts, but that she would get something. About a week or two later, Nowacky asked to see Goller and they met in his office. He told Goller that he had not received anything from Cogen and had spoken to Goldstein, who said that it was up to Goller ''to proceed with,'' and gave him all of the documents relating to Cogen's court leave. He neither ordered, nor suggested, that Goller remove Cogen. Goller determined that Cogen's actions warranted termination. He did not discuss this decision with the postmaster or Nowacky prior to making this decision. He decided that she had been paid money under false pretenses, and her

actions on May 20, 24, and 29, 1991, warranted dismissal. By letter dated February 4, signed by Goller, Cogen was informed of the discharge. The two reasons stated were ''Receiving Court Leave Pay Under False Pretenses'' and ''Failure to Follow Instructions.'' This second charge was, basically, a repeat of the first.

Cogen testified that she was given this letter by Goller on February 6, and that Goller said that he had been instructed to give it to her. She asked him what it was all about and he said: ''Gail, I don't know what this is about. I was just informed to do this and I'm really sorry.'' When she complained that nobody had spoken to her about it, he again said that he was sorry, but was told to do it. She has not worked there since that day.

It is alleged that Cogen's discharge was caused by her activities on behalf of the Union (her actions as chief steward), her protected concerted activities (her sanitary and health complaints), and by the fact that she had filed unfair labor practice charges with the Board, all in violation of Section 8(a)(1), (3), (4), and (5) of the Act.

In January, two female employees at the facility told Cogen of unsanitary conditions in the ladies' room. Cogen spoke to the person in charge of maintenance at the facility and filled out a postal service form reporting on hazardous or unsafe working conditions, stating that body lice were found in the ladies' room. At the same time, Cogen prepared a notice containing a picture of a sucking body louse and posted it in the ladies' room at the facility. The notice stated that body louse were found on the toilet seat and that maintenance said that they corrected it by cleaning and disinfecting the area. The notice ended by telling the employees to be careful when using the toilets. Cogen also posted this notice, dated January 10, on the Union's bulletin board at the facility. At the same time, Cogen made additional copies of the notice and gave copies to Walter Mulcahy, a bargaining unit employee and the director of maintenance for the Union. At her request, Mulcahy posted the notice in the men's rooms and on several tables in the lunchroom. Shortly thereafter he was told to report to the office of Bernie Badzinski, the manager of mail processing at the facility. When he arrived, in addition to Badzinski and others, the postmaster, Meredith Osborne, and Nowacky were present. Badzinski began speaking and Osborne held up the notice saying: ''What the hell is this all about?'' Mulcahy told him to read the notice and Osborne asked what they were doing. Mulcahy told Osborne that Cogen had prepared the notice, and if he had a problem with it he should speak to her about it directly. Mulcahy testified that later in January, after a fruitful discussion about maintenance at the facility, Osborne told him: ''You don't always have to file Labor Board charges like Gail Cogen.'' Mulcahy testified further, that in February, shortly after Cogen had been fired, Robert Glenn, supervisor of maintenance at the facility, told him: ''You better watch yourself, you'll be next.''

On January 10 Cogen also filed a hazardous and unsafe working conditions report alleging that large rodents were nesting near the trash compactor. She did this after an employee complained to her about the situation. When she mentioned the situation to Dennis Heart, the Supervisor on Tour III, he agreed with her that it was a problem, and wrote: ''Recommend maintenance assist the needs for an exterminator.''

Nowacky testified that he was not aware of the hazardous reports that Cogen filed regarding head lice or rats, although he did see the notice that she and Mulcahy posted about head lice. He never discussed the subject with Goller when he told him that it was his decision about what to do with Cogen. In his discussions with Osborne about the head lice, no animus was ever expressed toward Cogen. Goller also testified that he heard about complaints of head lice and rats at the facility, but did not know that Cogen had filed complaints about them.

Cogen filed unfair labor practices with the Board on September 11 and November 12, 1991. The earlier charge alleged that Respondent refused to allow her to file and pursue grievances, and interview witnesses, in violation of Section 8(a)(1) and (5) of the Act. The latter charge alleges that Respondent issued a letter of warning to Cogen because of her activities on behalf of the Union, in violation of Section 8(a)(1) and (3) of the Act. There has, apparently, been no final determination on either of these charges. She testified that in November 1991, while she and Osborne were in his office, he referred to problems they had working together, although it is not clear from her testimony whether he specifically referred to the Board charges. She told him that if other problems could be resolved she would consider withdrawing the charges; they weren't and she didn't. Hibbitt and Mitchell each testified that they were not aware that Cogen filed unfair labor practice charges with the Board. Nowacky testified that he was aware of Cogen's unfair labor practice charges with the Board, but never discussed it with Goller. When Goller was asked whether he was aware of Cogen's Board charges, he testified that he didn't recall. When he was shown something, apparently an affidavit, he testified: ''I guess, if that's what it says in here.'' As to whether this Board charge affected his decision to discharge Cogen, he testified: ''Not in the least.''

General Counsel also attempted to support his case by establishing disparate treatment toward Cogen, because of her Union and other concerted activities. In this regard, Hibbitt testified that employee Patricia Pajares was not fired for failing to turn in her jury duty check. The evidence on this subject is only that on August 6, 1991, Pajares wrote a check to the Respondent in the amount of $20 for ''repayment of Jury Duty. Employee Cashed Court Check.'' This was for 4 days of jury duty. Nowacky testified about two employees of Respondent who were fired for abuse of court leave, and both by their supervisor, without orders from him. One was fired at the same time as Cogen for being paid for 3 days court leave when she only served 2 days, and the other, for accepting pay for 11 days of court leave when she only served 9 days.

The remaining allegation is that Respondent refused to provide the Union with requested information, which was relevant to it as the employees' collective-bargaining representative, thereby violating Section 8(a)(1) and (5) of the Act. The information requests relate to Cogen's discharge in that they request information on Respondent's court leave records. By request dated February 25, the Union made the following request:

> The Union requests an opportunity to review all court leave records for all employees for fiscal year 1991. The Union also requests for the second time a copy of

> the Investigative Memo[3] pertaining to Ms. Cogen. The Union in addition requests a copy of Supervisor John Goller's request for discipline on Ms. Cogen. This information is needed and germane for the Union to properly represent grievant Gail Cogen.

This request was denied on the same day by Joseph Maloney, the tour III superintendent at the facility on the grounds that the information was not relevant at that stage of the grievance, but that if they still needed the information, it would be available to them at step 3. He also informed them that no Investigative Memorandum was prepared on the subject. By letter dated April 23, Nowacky informed the Union that it had come to his attention that they had requested court leave records for employees in 1991, Goller's request for discipline of Cogen, and the Investigative Memorandum for Cogen. His letter continues:

> If you will contact my office for an appointment I will have the documents you requested available for your review. Please be advised that an Investigative Memorandum has never been conducted and therefore cannot be made available.

By letter dated April 29, Dennis Bowie, director of industrial relations for the Union wrote to Nowacky requesting a specific date and time to inspect the records. The letter also stated: ''The Union also requests a copy of all pertinent information pertaining to Supervisor Alice Worrell's falsification of documents and her return to work.'' By letter dated May 4, Nowacky wrote to Bowie setting forth a date, time and place for Bowie and Cogen to examine the records requested, except:

> Your request for information regarding Alice Worrell is denied. Specifically, it is not germane to your original request. Additionally, the Privacy Act does not allow me to provide such information without prior consent.

Cogen and Bowie came to the facility on May 14 pursuant to Nowacky's letter and examined the requested documents. They were not given access to Supervisor Worrell's file because Respondent alleges it is not relevant to the Union and is protected by the Privacy Act. They also did not receive an Investigative Memorandum on Cogen's discharge because it did not exist. Nowacky testified that, other than these two items, the Union was showed ''Anything pertaining to court leave . . . . Everything that we had were made available.'' Cogen testified that ''There was a lot of information on employees that was missing,'' in addition to the fact that no Investigative Memorandum was produced, nor did they receive the information about Worrell. However, it is unclear from Cogen's testimony what information, if any, of the promised information was not supplied. At first she testified that some form 3971s were missing and that Bowie and a representative of Respondent got into a discussion about this information: ''I know it wasn't pertaining to the court leaks [sic] of information.'' She also testified that the Union wanted the information about Worrell because she was told that Worrell had falsified her time and was not punished: ''Everyone on the floor knew it.'' When Cogen was asked when this occurred, she testified: ''I was told . . . .'' Worrell was, allegedly, transferred to the facility after the incident.

[3] When warranted, Respondent's inspection service investigates a situation and prepares a report on the matter, an Investigative Memorandum.

IV. ANALYSIS

The principal question herein is whether Cogen was fired for falsifying her court leave and being paid by Respondent for 3 days that she did not serve, or whether Respondent retaliated against her for her actions as chief shop steward, for the health and safety complaints she filed and the notices she posted, or because of the unfair labor practice charges that she filed with the Board. Even absent credibility findings, I find that General Counsel has satisfied his burden under *Wright Line*, 251 NLRB 1083 (1980). Cogen was the chief steward at the facility. She also prepared and posted the health and safety notices regarding the lice and rats. In addition, in September and November 1991 she filed charges with the Board. This could not have endeared her to Osborne and Nowacky who had just assumed control of the facility after many months of the facility being run by acting supervisors. As Nowacky testified, in mid-September 1991 when he assumed his position at the facility, there was a lot of work and catching up to be done. He and Osborne could not have been too thrilled by these ''diversions'' from Cogen. Finally, there is no evidence that any employee was fired for falsification of court leave prior to Cogen.

In order to determine whether Respondent has satisfied its burden that it would have fired Cogen even absent her union activities, protected activities, and Board charge, it is necessary to make certain credibility determinations. For example, Cogen testified that when Goller told her that she was fired, he said that he had been instructed to do it, he didn't know what it was about, but was told to do it. Goller, on the other hand, testified that once Nowacky told him that Cogen's situation was his decision to make, he, alone, made the decision without even a suggestion from Nowacky. I have no difficulty in crediting the testimony of Goller over Cogen. Although he was, obviously, nervous, I found him to be an extremely credible witness. He appeared to be testifying as honestly and truthfully as he could remember with, apparently, no animus toward the Union or Cogen. I also found Hibbitt and Mitchell to be credible and believable witnesses; they are union members and had nothing to gain by supporting Respondent's defense herein. Nowacky was also an articulate and credible witness; although he probably shed no tears at Goller's decision to terminate Cogen, because I found Goller and Nowacky so credible, I credit their testimony that Nowacky left the decision to Goller, and Goller made the decision without any orders or recommendation from Nowacky. I also found credible Respondent's explanation for the long delay in Cogen's discharge. It is not unreasonable that when Nowacky began in mid-September, with a new postmaster, he had more important things to attend to that caused him to forget Cogen's court leave situation.

On the other hand, I found Cogen to be a less than credible witness. When the going got tough, she became evasive. See, for example, her answers to why she did not work on the days in question. What makes these answers even less credible, is that they are not correct factually. She testified, basically, that she did not report for work on the 3 days in question when there was no jury duty because she didn't get

home from jury duty on the prior day until about 6 p.m. and with showering, and transportation she would not be able to report for work on time, as well as the fact that she would have no time for sleep. What she forgot about was that she had filed two form 3189 changing her shift from the midnight shift to 9 a.m. to 5 p.m. Presumably, on the 3 days in question she could have reported for work at 9 o'clock (maybe after first calling the facility to say that she would be in) and worked the day shift. I also do not credit her testimony that Melillo ''okayed'' her taking annual leave on the days in question. It is undisputed that Melillo had no authority to do so and, as the chief shop steward, Cogen knew this. Melillo, a fellow bargaining unit member and union member was a very credible witness and had nothing to gain by testifying against Cogen's interest. I credit her testimony over that of Cogen. What makes these findings easier is that the credible testimony (of Nowacky, Hibbitt, and Goller) establishes that, on a number of occasions, they asked her about the situation and she said that she would get back to them, but never did. The conclusion is unmistakable that she realized that she was caught and was avoiding them. Finally, when Nowacky questioned Cogen on about December 11, 1991, about the situation, she testified that she went to the courthouse and learned that the court was not in session on the day (or days) in question. She testified that she tried to remember what occurred on that day. I find totally disingenuous her testimony about this:

> I took a calendar and I looked and said May 20? What was going on May 20? I had to think all the way back to what took place that day and then I remembered what took place that day.

What is so incredible about this is that 4 or 5 months earlier Hibbitt had asked her about this same subject on two occasions and she said that she would get back to him, but never did.

I find that the decision to fire Cogen was made by Goller only and was based solely upon his belief that she falsely took pay for court leave when she was not on court leave, and that he would have made the same decision absent her union and protected concerted activities, and her Board charges. Respondent has satisfied its burden under *Wright Line*, and I therefore recommend that this allegation be dismissed.

The remaining issue is whether Respondent violated Section 8(a)(1) and (5) of the Act by refusing to supply the Union with requested information. There are two distinct violations alleged herein. The first was a request for the court leave records for the fiscal year 1991. The request was made on February 25 and denied by Maloney on the same day on the ground that it was not relevant at that stage of the grievance. By letter dated April 23, Nowacky informed the Union that he would have these documents available for the Union's inspection, and Cogen and Bowie were given access to these documents on May 14. I find that this request was fully satisfied, although 2 months after the request was originally made.[4] Respondent alleges that there is no violation because the request was fully satisfied; although they did not agree to supply the information until 2 months after the request, Maloney told the Union that it would be made available to them at the next step of the grievance procedure, but the Union never made that further request. General Counsel alleges that the delay in supplying the information violates the Act.

In *Sheraton Hartford Hotel*, 289 NLRB 463 (1988), the Board, citing *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967), stated:

> Section 8(a)(5) obligates an employer to provide a union requested information if there is a probability that the information would be relevant to the union in fulfilling its statutory duties as bargaining representative. Where the requested information concerns wage rates, job descriptions, and other information pertaining to employees within the bargaining unit, the information is presumptively relevant. Where the information does not concern matters pertaining to the bargaining unit, the union must show that the information is relevant. When the requested information does not pertain to matters related to the bargaining unit, to satisfy the burden of showing relevance, the union must offer more than mere suspicion for it to be entitled to the information.

The information that the Union requested on February 25 clearly is presumptively relevant under this standard as it involves bargaining unit employees. It is also relevant to the Union in disputing Cogen's discharge: these records may assist the Union in establishing a case of disparate treatment. When a union is entitled to be provided with requested information, it is entitled to the information in a timely manner. Respondent provided no explanation for the delay of 2 months in telling the Union that they could have the information other than Maloney's statement that they would be entitled to it at step 3 of the grievance procedure. This was not a valid reason for delay. By this action the Respondent violated Section 8(a)(1) and (5) of the Act. *Quality Engineered Products Co.*, 267 NLRB 593 (1983); *Champ Corp.*, 291 NLRB 803 (1988).

The final issue is whether Respondent's refusal to provide the Union with the requested information regarding Worrell, a supervisor, violates the Act as well. Two prior matters involving the Postal Service are relevant herein: 289 NLRB 942 (1988) and 301 NLRB (1991). In the prior matter, while preparing to grieve the discipline and discharge of some of its members for engaging in gambling activity, the union discovered that some supervisors had also been involved in that gambling activity. As a result, the union requested that the Postal Service provide it with information regarding the discipline of the supervisors that were involved in this gambling activity. This request was denied. The Board rejected the Postal Service's defenses and found that the union was entitled to the information: ''Thus, because the gambling prohibition here applies to both groups, the requested information potentially has some bearing' on whether the unit employees were harshly, unjustly or disparately treated.'' Two aspects of this case are missing from the instant matter: the union had definite knowledge of the supervisor's involvement and

[4] The Union's request dated February 25 also requests the Investigative Memorandum pertaining to Cogen. As the credible evidence establishes that no Investigative Memorandum was prepared on the subject, there was nothing to produce, and I therefore recommend that this allegation be dismissed.

the employer's rules regarding the wrongdoing applied equally to supervisory and nonsupervisory employees. As stated above, *Sheraton Hartford* stated that when the requested information relates to nonunit employees, relevance must be established by more than mere suspicion. The request in the instant matter was based on Cogen's testimony that ''everybody knew'' that Worrell had falsified her time and had been transferred to the facility as a result. That is an insufficient basis for the Union to be entitled to the information.

The other deficiency herein is that the record fails to establish that Respondent's rules regarding falsification of court leave apply equally to supervisory employees; in fact, there is no record evidence, other than Cogen's testimony that everybody knew of Worrell's transgression, that Respondent had any similar rule regarding supervisors. For these reasons I recommend that this allegation be dismissed.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over Respondent by virtue of Section 1209 of the PRA.

2. The APWU is a labor organization within the meaning of Section 2(5) of the Act, and the Union is an agent of the APWU.

3. At all times material herein, the Union, as agent of the APWU, has been the exclusive representative of the employees in the following appropriate unit by virtue of Section 9(a) of the Act:

> All maintenance employees, special delivery messengers, motor vehicle employees and postal clerks employed by Respondent at its Hanover Township, New Jersey location.

4. Respondent violated Section 8(a)(1) and (5) of the Act by failing and refusing to provide the Union with requested information in a timely and expeditious manner.

5. Respondent did not violate the Act as further alleged in the complaint.

THE REMEDY

Having found that Respondent engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and that it take certain affirmative action necessary to effectuate the policies of the Act.

On the foregoing findings of fact, conclusions of law and the entire record, I issue the following recommended[5]

ORDER

The Respondent, the United States Postal Service, Hanover, Township, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the Union by failing or refusing to furnish it with requested information regarding bargaining unit employees in a timely and expeditious manner.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its facility in Hanover Township, New Jersey, copies of the attached notice marked ''Appendix.''[6] Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

IT IS FURTHER recommended that the allegations regarding the termination of Gail Cogen and the refusal to turn over the information regarding Supervisor Worrell be dismissed.

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[5] If no no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. l02.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''